

# **WILLIAMSBURG BOARD OF ZONING APPEALS MINUTES**

September 7, 2004

The regular meeting of the Williamsburg Board of Zoning Appeals was held on Tuesday, September 7, 2004 at 3:00 p.m. in the Williamsburg Municipal Building, 401 Lafayette Street.

## **ATTENDANCE**

Present were Board members Knudson, Kafes, White and Lamson. Absent was Board member Carr. Staff members present were Zoning Administrator Murphy and Secretary Scott.

## **CALL TO ORDER and MINUTES**

Chairman Knudson called the meeting to order. The minutes of the August 3, 2004 meeting were approved as corrected.

## **PUBLIC HEARINGS**

**BZA #04-006: Request of Trinh & Joseph Murphy for a variance from Section 21-256.7 of the Zoning Ordinance to construct a single-family dwelling 15 feet from the front property line instead of 25 feet as currently required by the Zoning Ordinance. The property is located at 434 South Henry Street, Williamsburg Tax Map Number 495-(0A)-00-057 and is zoned Limited Business Residential District LB-3. Tabled.**

Chairman Knudson introduced the request for a variance and noted the following BZA members have visited the site:

Knudson, Kafes, Lamson, and White

Mrs. Knudson asked for comments from the applicant.

David Harvey of Dave Harvey, Builders, representing the owners, stated that when the Murphys bought the property, they planned to hold on to it and build at a later date. He said they have now evaluated removing the old 1930's structure and building a new one conforming to the City of Williamsburg's requirements and the home standards of today. They have found their desired 3,000 square foot home is not practicable or even possible on the lot. The lot is one of the smallest, if not the smallest, in the area and although the owners and builder have tried different orientations in order to have functional areas of living, a variance is needed. Mr. Harvey said the market today is, of course, very different from the 1930's. Trying to make something new fit in something already existing, trying to satisfy a moderate amount of the market while being consistent with the surroundings, along with restrictions of the shallow, narrow lot, has necessitated

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coming before this Board. He noted that the predominance of lots in the area are either deeper or wider and with a variance for the Murphy lot, the structure would be in line with others along South Henry. He stated that granting the variance would not create a detriment to other properties because the properties would be at about the same depth, and the removal of the old structure and erection of new would be an improvement to the streetscape of the area.

Board/applicant comments included:

- The suggestion of a 2 ½ story house versus a 1 ½ story was presented, but the builder asked that the Board not just look at the square footage inside a box; the space needs to be practical and functional. The builder explained why the garage should be on the side nearest the kitchen.
- The builder noted that the layout of the home is critical, and if something reasonable for today's market can't be built, the Murphys may not be able to build at all on this lot.
- The builder said the request complies with the 40% rule, they are not asking for anything out of the ordinary, and feel they have met all tests.

Mrs. Knudson opened the public hearing.

There being no comment the public hearing was closed.

Board member White stated that she is struggling with the April 2004 Virginia Supreme Court's very restrictive decision regarding variances. Under the decision in that case, the Supreme Court said that a variance is only proper where the Zoning Ordinance at issue interferes "with all reasonably beneficial uses of the property, taken as a whole." Mrs. White said that prior to the Court's decision she probably would have voted to approve this request. As a member of the Board of Zoning Appeals she feels obligated to follow the Supreme Court's recent decision, but she would like the legal guidance of the City Attorney regarding the authority of the BZA to grant variances given the recent court decision. She also stated that the applicant might want to consider seeking an amendment to the ordinance by the City Council to change the setback line along Henry Street, and asked if the applicant and other Board members would entertain a continuance.

Mr. Harvey asked if the 40% rule doesn't define the City's guidelines for the BZA's decision making and Mrs. Murphy responded that the 40% rule cannot be used in this instance because this is the *only* structure between Newport Avenue and Crump Lane.

Mrs. White asked if the case could be continued.

Mr. Kafes said he is not inclined to support the requested variance, since there was no convincing showing that the strict application of the Zoning Ordinance would effectively prohibit or reasonably restrict utilization of the property. While it may be true that compliance with the Ordinance would preclude a house and garage of the particular design and layout sought by the applicant, it was also

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true that a house with a 2,325 square foot "footprint" could be accommodated on the lot. If a two-story house were to be built, it could be as large as 4,650 square feet, a very large house, which could easily provide garage space.

Mr. Lamson stated he would support the request for a variance, but agrees that it may be a wise idea to seek City Attorney Joe Phillips' advice regarding the Court's decision, and grant a continuance for this case.

Mrs. Knudson agreed with Mr. Lamson and Mrs. White regarding the advisability of a continuance.

The applicant's representative, Dave Harvey, concurred with the continuance to allow time for staff to talk with the City Attorney.

Mrs. Murphy said a change in the setback along Henry street would need to go before the Planning Commission and then the City Council, but the process could be begun while checking with Attorney Phillips regarding the Supreme Court's decision.

Mrs. White moved to table BZA #04-006 to the October 5, 2004 meeting. Mr. Lamson seconded the motion which carried by a vote of 3-1.

Recorded vote on the motion:

Aye: White, Knudson, Lamson  
No: Kafes  
Absent: Carr

**OLD BUSINESS** - none

**NEW BUSINESS**

Mrs. White introduced Peter Lubeck who is an intern in her law office of Kaufman and Canoles while pursuing his MBA and law degree at the College of William and Mary.

**OTHER** - none

There being no further business the meeting adjourned at 3:45 p.m.

Respectfully submitted,

Judith Knudson, Chairman  
Board of Zoning Appeals